

APPENDIX A –1

Sample Contract

DESIGN-BUILD AGREEMENT

This Design-Build Agreement ("Agreement") is made effective this _____ day of _____, 2009 ("Agreement Date") by and between the City of San Ramon, a municipal corporation, hereinafter referred to as ("CITY"), and NAME OF DESIGN BUILD CONTRACTOR, hereinafter referred to as VENDOR/CONTRACTOR, *form and state of business, organization address, and State Contractor's License No.*, for design, management, and construction of the Traffic Signal Mgmt. Sys. Upgrade: Bollinger Cnyn. Rd. & Crow Cnyn. Rd. (CIP 5457) on a Turnkey Contract Basis ("PROJECT"). CITY and VENDOR/CONTRACTOR mutually agree as follows:

ARTICLE 1 – CONTRACT DOCUMENTS AND INTERPRETATION

- 1.1 Definitions.** The meanings of all capitalized terms used in the Contract Documents and not otherwise defined herein are contained in the General Conditions.
- 1.2 Contract Documents.** The "Contract Documents", except for Modifications issued after execution of this Agreement, consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference:
- (1) Permits from the Planning/Community Development Department and other governmental agencies may be required for the Work by Applicable Law;
 - (2) This Agreement as signed by the Parties and effective as the day first written above. Addenda issued prior to and Modifications issued after the effective date of the Agreement are hereby incorporated by this reference and made a part hereof as follows:

All Addenda

- a. **Exhibit A** – Proposal Submitted in Response to City Request for Proposals.
- b. **Exhibit B** – Scope of Work and Index of Performance Criteria Documents.
- c. **Exhibit C** – Performance Bond;
- d. **Exhibit D** – Payment Bond;
- e. **Exhibit E** – Insurance Requirements, and certificates and endorsements from VENDOR/CONTRACTOR and its Design Team Members, as approved by the CITY;

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- f. **Exhibit F** – General and/or Automobile Liability Additional Insured Endorsement;
 - g. **Exhibit G** – Worker's Compensation Certification;
 - h. **Exhibit H** – Key Personnel List;
 - i. **Exhibit I** – Payment forms; and
 - j. **Exhibit J** – Consent of Surety to Release of Retention and Final Payment.
- (3) General Conditions (Section 00700);
 - (4) RFP Documents attached hereto as Exhibit B;
 - (5) VENDOR/CONTRACTOR's Proposal Documents; and
 - (6) Construction Documents prepared by VENDOR/CONTRACTOR and approved by the CITY.

1.3 Reference Documents. The following Reference Documents are not considered Contract Documents and were provided to the VENDOR/CONTRACTOR for informational purposes. VENDOR/CONTRACTOR may rely upon the technical data contained in such documents but not upon non-technical data, interpretations, opinions or provisional statements contained therein:

1.4 Entire Agreement. The Contract Documents contain the entire and integrated agreement between CITY and VENDOR/CONTRACTOR and supersede and prior written or oral agreements between them concerning the PROJECT. This Contract may be amended only by written Modification signed by the CITY's PROJECT Representative.

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ARTICLE 2 – TIME OF PERFORMANCE

2.1 Contract Time.

2.1.1 Phased Notice to Proceed. Not applicable.

2.1.2

2.1.3 Commencement. The Date of Commencement of the Work shall be fixed in the initial Design Notice to Proceed issued by the CITY. If CITY'S execution of this Agreement or issuance of the initial Notice to Proceed is delayed due to VENDOR/CONTRACTOR failure to return the signed Agreement, insurance documents or bonds within **fifteen (15) calendar days** after the date of award of the Contract, **one (1) calendar day** will be deducted from the number of days to achieve Substantial Completion of the Work for every day of delay in CITY's receipt of such documents. This right is in addition to and does not affect City's right to demand forfeiture of VENDOR/CONTRACTOR Proposal Security, or any other rights or remedies available to CITY if VENDOR/CONTRACTOR persistently delays in providing the required documentation.

2.1.4 Completion. VENDOR/CONTRACTOR agrees to promptly commence the Work after the Notice to Proceed is issued by the CITY, to achieve Substantial Completion of the Work (excluding the Maintenance Period) within **70 days** after the date of commencement established in the CITY's initial Notice to Proceed ("Contract Time") and to achieve Final Completion of the Work within the **seventy (70) calendar days** thereafter. The Contract Time may be extended only with the written authorization of the CITY.

2.2 Liquidated Damages for Vendor/Contractor Delays.

2.2.1 VENDOR/CONTRACTOR shall complete the design and construction of the system within 70 working days of issuance of the Notice to Proceed.

2.2.2 Failure of the VENDOR/CONTRACTOR to substantially comply with the requirements of this Article will result in CITY's assessment of Liquidated Damages and may be considered grounds for a default termination by City, pursuant to the provisions of the General Conditions.

2.2.3 Amount of Liquidated Damages.

(1) In the event that PROJECT is delayed by inexcusable delays beyond the 70-day contract completion period,

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VENDOR/CONTRACTOR and its Surety shall be liable for Liquidated Damages and shall pay to CITY FOUR HUNDRED AND FIFTY DOLLARS (\$450.00) for day for each calendar the contract completion period is exceeded.

2.2.4 Assessment of Liquidated Damages.

- (1) The Parties intend for the Liquidated Damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Design-Build Entity acknowledges and agrees that the Liquidated Damages are intended to compensate CITY solely for VENDOR/CONTRACTOR failure to meet the milestones and shall not excuse VENDOR/CONTRACTOR from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.
- (2) VENDOR/CONTRACTOR acknowledges and agrees that the forgoing Liquidated Damages have been set based on an evaluation by CITY of damages that it will incur in the event of late completion of the Work. VENDOR/CONTRACTOR and CITY agree that the amount of such damages are impossible to ascertain as of the effective date hereof and the Parties have agreed to such Liquidated Damages to fix VENDOR/CONTRACTOR costs and to avoiding later disputes. It is understood and agreed by VENDOR/CONTRACTOR that and Liquidated Damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.
- (3) It is further mutually agreed that the amounts of Liquidated Damages are cumulative (e.g. if PROJECT is delayed beyond the contract completion period Liquidated Damages will be assessed at the cumulative effective rate of \$450 per calendar day). The CITY shall have the right to deduct Liquidated Damages against progress payments or retainage and that the CITY will issue a unilateral Construction Change Order to reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of Liquidated Damages, VENDOR/CONTRACTOR shall pay the difference to CITY.

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ARTICLE 3 – CONTRACT SUM

3.1 Lump Sum. In consideration of VENDOR/CONTRACTOR performance of the Work described herein, CITY agrees to pay VENDOR/CONTRACTOR the Contract Sum of **TOTAL CONTRACT AMOUNT** (\$_____) subject to additions and deductions by Change Order or Construction Change Directive, as provided in the Contract Documents. Except as otherwise provided in the Contract Documents, the Contract Sum will fully compensate VENDOR/CONTRACTOR for all labor, services, material, transportation, supervision, taxes, permits, licenses, insurance, bonds, overhead and profit the duration of the Work.

3.2 Unit Prices.

3.3 Allowances. The Contract Sum includes the Allowances, if any. *(Not Used.)*

3.4 Alternate Items.

3.4.1 Accepted Alternates. The Contract Sum includes the following Alternate Items, which were accepted by the CITY at the time of award of the Contract:

(List or indicate N/A)

3.4.2 Open Alternates. The Contract Sum does not include the following Alternate Items and may be accepted by CITY by Construction Change Directive within **ninety (90) calendar days** after Contract award.

(List or indicate N/A)

ARTICLE 4 – PAYMENT

4.1 Payments for Design Phase Services. Progress payments for Design Phase Services in the total amount of (\$_____), which amount is included within the Contract Sum, shall be made monthly, based upon the percentage of completed Services accepted by CITY, without or with retention according to the following schedule:

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<u>Design Phase</u>	<u>Dollar Amount</u>
Total Compensation for Design	\$

4.2 Payments for Construction Phase Services.

Payments for Construction Phase Services in the total amount of SPELL OUT TOTAL CONTRACT AMOUNT HERE (\$XXX.XX), which amount is included within the Contract Sum shall be made as follows:

4.2.1 Progress Payment Procedures. In accordance with the requirements of Public Contract Code Section 20104.50, which is incorporated herein by this reference (the text of which is included in Appendix 1 hereto) and based upon Applications for Payments for Construction Phase Services submitted by the VENDOR/CONTRACTOR to the CITY's PROJECT Representative, CITY shall make payments to the VENDOR/CONTRACTOR based upon percentage of completion less \$10% retention, subject to provisions for reduction of retention in accordance with the General Conditions.

4.2.2 Final Payment.

- (1) Within **seventy (70) calendar days** after CITY's acceptance of Final Completion of the Work (excluding Plant Establishment and Plant Maintenance) and CITY's recordation of a Notice of Completion, CITY shall pay VENDOR/CONTRACTOR the Final Payment, constituting entire unpaid balance of the Contract Sum, less SPELL OUT DOLLAR AMOUNT HERE (\$XXX.XX), (one hundred fifty percent (150%) of the value of the Plant Establishment and Plant Maintenance Work as established in the Owner-approved Schedule of Values) to secure VENDOR/CONTRACTOR performance during the Plant Establishment and Plant Maintenance period and excepting such amounts which are required by law or authorized by the Contract to be further retained, including all Punch List Work.
- (2) In the event of a dispute between CITY and VENDOR/CONTRACTOR concerning the amount of final payment due, the CITY may withhold from Final Payment Liquidated Damages together with an amount not to exceed

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one hundred fifty percent (150%) of the value of disputed amounts for incomplete Work.

ARTICLE 5 – CHANGES IN THE WORK

- 5.1 Adjustments to Contract Sum.** Adjustments to the Contract Sum for changes in the Work may be determined by any of the methods listed in Article 7 of the General Conditions. VENDOR/CONTRACTOR shall make a good faith determination of the validity of the nature and amount of Design Consultant and Subcontractor Change Order Requests before passing through such requests to CITY.
- 5.2 Adjustments to Contract Time.** The Contract Time may be extended or reduced only in accordance with the provisions of the General Conditions of the Contract.
- 5.3 Notice and Back-up Documentation.** For increases to the Contract Sum and/or Contract Time for changes in the Work, VENDOR/CONTRACTOR shall comply with all notice and documentation requirements set forth in Articles 4, 7, and 8 of the General Conditions.
- 5.4 Prior Written Approval.** VENDOR/CONTRACTOR shall not be compensated for any extra services, materials used, or time expended, over and above the Contract Sum, unless prior written approval for the same has been granted by CITY.
- 5.5 Waiver.** VENDOR/CONTRACTOR acknowledges and agrees that its failure to submit any request for change or claim arising under this Contract in accordance with the requirements of the Contract Documents, shall constitute a waiver of VENDOR/CONTRACTOR right to additional compensation and/or extension of time.

ARTICLE 6 – DESIGN-BUILD ENTITY'S DUTIES AND RESPONSIBILITIES

VENDOR/CONTRACTOR furnish all design and other Services, provide all materials and undertake all efforts necessary or appropriate to construct the Work in accordance with the requirements of the Contract Documents, all governmental approvals, the approved Construction Documents, all Applicable Law, and all other applicable safety, environmental and other requirements taking into account the constraints affecting the PROJECT site. Except as otherwise specifically provided in this Contract, all materials, services and efforts necessary to achieve completion of the PROJECT and elements thereof on or before the deadlines

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provided in the Contract Documents shall be VENDOR/CONTRACTOR's sole responsibility. The costs of all such materials, services and efforts are included in the Contract Sum. The scope of Services to be provided by VENDOR/CONTRACTOR is set forth in the Contract Documents as more particularly described in Exhibit B and the Performance Criteria Documents.

- 6.1 Business Tax Registration.** The VENDOR/CONTRACTOR and all Design Consultants and Subcontractors, shall obtain a Business Tax Registration from the CITY prior to commencement of Work.
- 6.2 Key Personnel.** The VENDOR/CONTRACTOR PROJECT Representative and Key Personnel are designated in Exhibit F.
- 6.3 Design Professional Licensing Requirements.** CITY does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of this Contract, VENDOR/CONTRACTOR acknowledges that CITY has no such intent. It is the intent of the Parties that VENDOR/CONTRACTOR is fully responsible for furnishing the design of the PROJECT, although the fully licensed design firms designated as members of the Design Team, will perform the design services required by the Contract Documents. Nothing in this article shall create a contractual relationship between such Persons and the CITY.
- 6.4 Standard of Care.** All design Services to be performed by VENDOR/CONTRACTOR, the Design Team Members, Subcontractors, and their employees identified by the VENDOR/CONTRACTOR or other persons approved by the CITY shall be performed in an expeditious and professional manner using architects, engineers and other professionals properly licensed and duly qualified in the jurisdiction in which the PROJECT is located. The professional obligations of such persons shall be undertaken and performed in the interest of the VENDOR/CONTRACTOR. All design Services performed pursuant to this Agreement shall be performed with the degree of skill and learning ordinarily possessed by architects and engineers in good standing in the community regularly engaged in the design and construction of an improvement such as this PROJECT and must apply that knowledge with the diligence ordinarily exercised by reputable architects and engineers under similar circumstances ("Standard of Care").
- 6.5 Constructability and Coordination Reviews.** On at least a monthly basis or such other intervals identified in the Contract Documents, VENDOR/CONTRACTOR shall meet with the CITY, its separate Contractors,

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and consultants to coordinate the Construction Documents, including the design of building systems delegated to the VENDOR/CONTRACTOR, for the purpose of continuing construction feasibility, identifying conflicts, missing information or gaps in the planned scope of Work and to take appropriate action to ensure the full scope of intended Work is performed efficiently and economically.

ARTICLE 7 – BONDS AND INSURANCE

7.1 Bonds. Prior to the CITY's execution of this Agreement and issuance of the Notice to Proceed, VENDOR/CONTRACTOR shall furnish to CITY, a completed payment bond in an amount which shall remain equal to one hundred percent (100%) of the Contract Sum, and a completed performance bond, in an amount which shall remain equal to the Contract Sum as more particularly described in Paragraph 11.2 of the General conditions using the forms attached hereto as Exhibits C and D.

7.2 Insurance. Prior to CITY's execution of this Agreement and issuance of a Notice to Proceed, VENDOR/CONTRACTOR shall submit certificates and endorsements evidencing that the Insurance Requirements for VENDOR/CONTRACTOR and its Design Consultants and Subcontractors, are set forth in the attached Exhibit E have been satisfied.

7.3 Labor Code Section 3700 Certification.

7.3.1 By executing this Agreement, VENDOR/CONTRACTOR certifies that VENDOR/CONTRACTOR is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any of the Work. VENDOR/CONTRACTOR shall comply with Labor Code Section 1861 by signing and filing the workers' compensation certification with the City Attorney.

7.3.2 Prior to the CITY's execution of this Agreement, VENDOR/CONTRACTOR shall file with the CITY either (1) a certificate of insurance or self-insurance evidencing that such insurance is in effect, or that VENDOR/CONTRACTOR is self-insured for such coverage; or (2) a certified statement that VENDOR/CONTRACTOR does employ any person, the necessary certificate of insurance will immediately be filed with CITY. Any Certificate filed with the CITY shall provide that CITY

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shall be given ten (10) days prior written notice before modification or cancellation thereof.

ARTICLE 8 – MISCELLANEOUS PROVISIONS

- 8.1 Independent Design-Build Entity.** VENDOR/CONTRACTOR is, and shall be, acting at all times in the performance of this Agreement as an independent VENDOR/CONTRACTOR. VENDOR/CONTRACTOR shall secure at its expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for VENDOR/CONTRACTOR and its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.
- 8.2 City Employees and Officials.** VENDOR/CONTRACTOR shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of applicable provisions of law.
- 8.3 Notices.** Any notice or special instructions required to be given in writing under this Agreement shall be given either by personal delivery to VENDOR/CONTRACTOR agent or to CITY's Engineer and City Attorney as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

To CITY:

City of San Ramon
Attn: Patricia Edwards, City Clerk
2222 Camino Ramon
San Ramon, CA 94583

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With a copy to:

City of San Ramon
Attn: Maria Robinson, Engineering Services Director
2222 Camino Ramon
San Ramon, CA 94583

To Design-Build Entity:

NAME OF COMPANY
Attn: CONTACT PERSON
ADDRESS
CITY, STATE, ZIP

- 8.4 Contractor's License Notice.** Contractors are required by law to be licensed and regulated by the Contractor's State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.
- 8.5 Offsets.** VENDOR/CONTRACTOR acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which is owed, or which becomes owed, by VENDOR/CONTRACTOR to CITY, CITY reserves the right to withhold and offset said amounts from any payments, refunds or reimbursements owed by CITY to VENDOR/CONTRACTOR under the Agreement. Notice of such withholding and offset shall promptly be given to VENDOR/CONTRACTOR by CITY in writing. In the event of a dispute as to the amount owed or whether such amount is owed to CITY, CITY will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.
- 8.6 General Compliance with Laws.** VENDOR/CONTRACTOR shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by VENDOR/CONTRACTOR, or in any way affect the performance of services by VENDOR/CONTRACTOR pursuant to this Agreement. VENDOR/CONTRACTOR shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the

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compliance of Design-Build Entity's services with all applicable laws, ordinances and regulations.

- 8.7 Non-Discrimination.** Except as provided in Section 12940 of the California Government Code, during VENDOR/CONTRACTOR performance of the Contract, VENDOR/CONTRACTOR shall not discriminate on the grounds of race, religious creed, color national origin, ancestry, age, physical handicap, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation in the selection and retention of employees and subcontractors and the procurement of materials and equipment. VENDOR/CONTRACTOR shall also comply with the requirements of the Americans with Disabilities Act in the performance of the Contract.
- 8.8 Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of the Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.
- 8.9 Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

*****SIGNATURES ON NEXT PAGE*****

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IN WITNESS WHEREOF the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed the effective date of this Agreement.

City of San Ramon
A Municipal Corporation "CITY"

Company Name
"DESIGN-BUILD ENTITY"

H. Abram Wilson, Mayor Date

Signature Date

Herb Moniz, City Manager Date

Print Name of Signatory

**The Foregoing Agreement Has
Been Reviewed and Approval
Is Recommended:**

Title of Signatory

Maria Robinson Date
Department Director

San Ramon Business License #

APPROVED AS TO FORM:

Byron D. Athan Date
City Attorney

Resolution No. 200X-XX
Approved by City Council on DATE

ATTEST:

Patricia Edwards Date
City Clerk

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APPENDIX "1"

Public Contract Code Article 1.7 Modifications, Performance, Payment

Section 210104.50. Timely progress payments; legislative intent; interest; payment requests..

- (a) (1) It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.
- (2) It is the intent of the Legislature in enacting this article to fully occupy the field of public relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.
- (b) Any local agency which fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.
- (c) Upon receipt of a payment request, each local agency shall act in accordance with both of the following:
 - (1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
 - (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied

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by a document setting forth in writing the reasons why the payment request is not proper.

- (d) The number of days available to the local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven (7) day return requirement set forth in paragraph (2) of subdivision (c).
- (e) For purposes of this article:
 - (1) A "local agency" includes, but is not limited to, a city, including a charter city, a county, and a city and county, and is any public entity subject to this part.
 - (2) A "progress payment" includes all payments due contractors; except that portion of the final payment designated by the contract as retention earnings.
 - (3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.
- (f) Each local agency shall require that this article, or a summary thereof, be set forth in the terms of any contract subject to this article.

(Article 1.7 of the Public Contract Code was added by Stats. 1992, c. 799 (S.B.56), § 2.)

APPENDIX A-2

- City Of San Ramon Legislative Policies/Administrative Policies

***(Includes Insurance Requirements and
Conflict of Interest Requirements)***

CITY OF SAN RAMON LEGISLATIVE POLICIES/ADMINISTRATIVE POLICIES

The CITY requires compliance with the following legislative policies; Insurance Requirements and Certification, Conflict of Interest (Form 700), W-9, and an active San Ramon Business License. These requirements must be completed to award a public service contract.

A. Insurance Requirements

It shall be the responsibility of the CONSULTANT to maintain all insurance required as set forth below. CONSULTANT shall provide a certificate of insurance showing the required insurance in effect prior to the City Council awarding a contract. CONSULTANT shall maintain said insurance during the term of the contract. Should any of the coverage or policies be canceled before the expiration of the contract, the CONSULTANT must provide the CITY written notice thirty (30) days prior to the cancellation date. The CONSULTANT must provide a valid insurance certificate showing the required coverage and endorsements prior to the expiration of any policy. In the event coverage or policies are not in effect at any time during the term of the contract, the contract will be considered canceled, effective with the date the action occurred with the document.

CONSULTANT must provide proof of the following insurance:

1. General Liability, Automobile, Worker's Compensation and Professional Liability. CONSULTANT shall procure, prior to commencement of service, and keep in force for the term of this contract, at CONSULTANT'S own cost and expense, the following policies of insurance, certificates, or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the CITY. If requested, CONSULTANT shall provide the CITY with copies of all insurance policies. The insurance shall, at a minimum, include:
2. Commercial General Liability Insurance. Commercial General Liability insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability and if necessary, Products and Completed Operations or Owners and CONSULTANT Protective Liability. The policy shall contain severability of interest clause or cross liability clause or the equivalent thereof.
 - (a) Coverage afforded on behalf of the CITY shall be primary insurance, and any other insurance available to the CITY under any other policies shall be excess insurance (over the insurance required by this Agreement).
 - (b) Limits of liability shall include the following:
 - Bodily Injury one million dollars (\$1,000,000.00),
 - Property Damage one million dollars (\$1,000,000.00), or

- Combined Single Limit (C.S.L.) for Bodily Injury and Property Damage one million dollars (\$1,000,000.00) per accident for bodily injury and property damage for duration of Agreement.
- (c) If the policy is a “claim made” type policy, the following shall be included as endorsements:
- The retroactive date shall be the effective date of this Agreement or a prior date.
 - The extended reporting or discovery period shall not be less than thirty-six (36) months.
3. Automobile Liability Insurance. Automobile Liability Insurance, including all owned, non-owned and hired automobiles used by the CONSULTANT or its agents in the performance of this Agreement shall have a minimum combined single limit of one million dollars (\$1,000,000.00) for Bodily Injury and Property Damage.
 4. Worker’s Compensation Insurance. Worker’s Compensation Insurance, as required by the laws of the State of California – Statutory coverage may include Employers Liability coverage with limits not less than one million dollars (\$1,000,000.00). The CONSULTANT certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to provide Workers’ Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The CONSULTANT shall comply with the provisions of Section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that Code. CONSULTANT shall require all SUBCONSULTANTS to carry Workers’ Compensation Insurance, as required by the Labor Code.
 5. Professional Liability Insurance. Professional Liability – errors and omissions insurance in the amount of one million dollars (\$1,000,000.00) per claim and in aggregate for two (2) years beyond the date of project acceptance by the CITY.
 6. Terms, Conditions and Endorsements. The aforementioned insurance shall be endorsed and have all the following conditions:
 - (a) Additional Insured. CONSULTANT shall name the CITY, its Councilmembers, directors, officers, agents and employees as additional insureds in its Comprehensive Commercial General Liability and Automobile Liability policies. If CONSULTANT submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 1185 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance). A statement of additional insured endorsement on the ACORD Insurance Certificate form is insufficient proof of the additional insured requirement and will be rejected.

- (b) Cancellation Notice. CONSULTANT is required to provide the CITY thirty (30) calendar days written notice prior to cancellation, termination or MATERIALS change in coverage.
- (c) Insurance Rating. Insurer shall carry a Best Rating of B+ or greater.
- (d) Replacement of Coverage. A breach of any insurance provision in the fully executed Agreement shall grant the CITY the option to take out and maintain, at the expense of the CONSULTANT, such insurance in the name of the CONSULTANT as is required pursuant to the Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to CONSULTANT under the Agreement.
- (e) Insurance Interpretation. All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the State of California Insurance Services Office, as of the date of the fully executed Agreement.
- (f) Proof of Insurance

CONSULTANT will be responsible for providing proof of all insurance required for the work prior to execution of the contract, including copies of CONSULTANT'S insurance policies if and when requested. Failure to provide the insurance proof requested, or failure to do so in a timely manner, shall constitute ground for rescission of the contract award.

B. Conflict of Interest

The following protections against conflict of interest will be upheld:

1. CONSULTANT certifies that no member of, or delegate to, the Congress of the United States, shall be permitted to share or take part in the executed Agreement or in any benefit arising therefrom.
2. CONSULTANT certifies that no member, officer, or employee of the CITY or its designees or agents, and no other public official of the CITY, who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in the Agreement, or in its proceeds during his/her tenure or for one year thereafter.
3. CONSULTANT shall immediately notify the CITY of any real or possible conflict of interest between work performed for the CITY and for other clients served by the CONSULTANT.
4. CONSULTANT warrants and represents, to the best of its present knowledge, that no public official or employee of the CITY who has been involved in the making of this Agreement, or who is a member of a CITY board or commission which has been involved in the making of this Agreement, whether in an advisory or decision making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in

California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. CONSULTANT shall exercise due diligence to ensure that no such official will receive such an interest.

5. CONSULTANT further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by CONSULTANT to CITY, that (1) no public official of CITY who has participated in the decision making concerning this Agreement, or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in CONSULTANT or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$1,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$1,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$250 the previous year. CONSULTANT agrees to promptly disclose to CITY in writing any information it may receive concerning any such potential conflict of interest. CONSULTANT'S attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 897100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).
6. CONSULTANT understands that in some cases CONSULTANT or persons associated with CONSULTANT may be deemed a "City officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. CONSULTANT further understands that as a public officer or official, CONSULTANT or persons associated with CONSULTANT may be disqualified from future CITY contracts to the extent that CONSULTANT is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
7. CONSULTANT shall incorporate, or cause to be incorporated into all subcontracts for work to be performed under this Agreement, a provision governing conflict of interest in substantially the same form set forth herein.

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation.

In addition to the rights and remedies otherwise available to the CITY under this Agreement and under federal, state and local law, CONSULTANT understands and agrees that, if the CITY reasonably determines that CONSULTANT has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the CITY may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by CONSULTANT to the CITY of any amounts disbursed under this Agreement. In addition, the CITY may suspend

payments or terminate this Agreement whether or not CONSULTANT is responsible for the conflict of interest situation.

C. Business Registration

It shall be the responsibility of the CONSULTANT to maintain all licenses, permits and certifications as required by federal, state and local laws, regulations, codes or ordinances for the performance of this contract. CONSULTANT shall provide copies of any required documents in effect prior to the contract going before the City Council for approval. CONSULTANT shall maintain all licenses, permits and certifications during the term of the contract. Should any license, permit or certification expire, be cancelled, suspended or revoked before the expiration of the contract, the CONSULTANT must, within 72 hours, provide written notice to the CITY of such action. In the event any license, permit or certification is not in effect any time during the term of the contract, the contract will be considered canceled effective with the date the action occurred with the document.

The CONSULTANT shall insure that its business registration fee is paid and current during the term of this contract. In the event the business license fee becomes due during the term of the contract, the CONSULTANT must advise the CITY in writing thirty (30) days prior to the expiration of the Business Registration. If the fee is not paid within thirty (30) days, the CITY will withhold payment of invoices until the CONSULTANT obtains and submits a valid Business Registration.